

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

UNITED STATES OF AMERICA,

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v.

No. 1:21-CR-00216-RP

(1) MICHAEL FULLERTON,
Defendant

ORDER

Before the Court is Defendant's appointed attorney's Motion to Withdraw as Counsel and for Appointment of New Counsel, Dkt. 79. The District Court referred the motion to the undersigned for disposition. Dkt. 80. The Motion states that Defendant "has lost faith and all confidence in defense counsel. Accordingly, defense counsel and [Defendant] are no longer able to communicate effectively." Dkt. 79, at 1. Defendant's responses to the motion, which he filed pro se, confirm counsel's representations regarding the state of their working relationship. Dkts. 84, 85. The undersigned set the motion for a hearing, which was held on September 23, 2022. Dkt. 82. Defendant and his appointed counsel, Assistant Federal Public Defender Jesus Salinas, were present.

Based on the representations in the filings and confirmed on the record during the Court's hearing on the motion, the Court will permit the withdrawal of Mr. Salinas and appoint new counsel. However, as the Court advised Defendant during the hearing on the motion, future requests for new appointed counsel will not be well-taken. Moreover, the Court reminds Defendant (again reiterating what he was told

on the record during the hearing), the U.S. Court of Appeals for the Fifth Circuit has observed that “a persistent, unreasonable demand for dismissal of counsel and appointment of new counsel … is the functional equivalent of a knowing and voluntary waiver of counsel.” *United States v. Moore*, 706 F.2d 538, 540 (5th Cir. 1983); *see also United States v. Mesquiti*, 854 F.3d 267, 272 (5th Cir. 2017) (same); *United States v. Fields*, 483 F.3d 313, 350 (5th Cir. 2007) (“[I]ndigent defendants have no right to appointed counsel of their choice.”).

IT IS THEREFORE ORDERED that the Motion, Dkt. 79, is GRANTED. Mr. Salinas is permitted to WITHDRAW as counsel for Defendant, and Mr. James R. Young, 1411 West Ave., Suite 200, Austin, TX 78701, (512) 472-1961, is appointed to represent Defendant in the above-captioned case. The Court FURTHER ORDERS that Mr. Salinas meet with Mr. Young at the earliest opportunity to give Mr. Young a copy of the file and bring him up to date with regard to the representation of Defendant. Thereafter, Mr. Salinas has no further responsibilities in this case.

SIGNED September 23, 2022.



DUSTIN M. HOWELL
UNITED STATES MAGISTRATE JUDGE